

March 27, 2007

A special meeting of the Redmond City Council was called to order by Mayor Pro Tempore, Nancy McCormick at 7:31 p.m., pursuant to notice, in the Council Chambers. Councilmembers present were: Allen, Cole, McCormick, Resha, Robinson, and Vache.

APPEAL HEARING FROM THE FINDINGS, CONCLUSIONS, AND DECISION OF THE HEARING EXAMINER PRO TEMPORE ON THE APPEAL OF A TYPE I PERMIT ISSUED FOR TENT CITY 4 (QUASI-JUDICIAL)

The Mayor Pro Tempore McCormick began by reading letters from Mayor Rosemarie Ives and Councilmember Marchione in which they recused themselves from the appeal hearing. Mayor Pro Tempore McCormick introduced Robin Jenkinson, Legal Advisor for the appeal hearing and City Attorney for the City of Kirkland. Ms. McCormick explained that Ms. Jenkinson is advising the Council because Redmond City Attorney, James Haney, will be representing the Department of Planning and Community Development staff.

Ms. Jenkinson explained that this is a closed record appeal hearing under File No. L060474. There are seven appeals consolidated for hearing and decision making purposes. The Appellants are: Naomi Call; City of Redmond; Amanda Fleig; Jeffrey A. Schur; Shelly Schur; SHARE/WHEEL; St. Jude Parish; and Jon Wilcox. She stated the appeal hearing is limited to information contained in the record developed before the Hearing Examiner Pro Tem, and as provided in the City Council rules, in a quasi-judicial matter before the Council, oral argument is limited to a maximum of ten minutes for each side (proponents and opponents). She further explained that for the purposes of this hearing, the Appellants City of Redmond, SHARE/WHEEL, and St. Jude's Parish are being treated as proponents and will have a total of ten minutes to divide among themselves. Appellants Naomi Call, Amanda Fleig, Shelly and Jeffrey Schur, and Jon Wilcox will be treated as opponents and will have a total of ten minutes to divide among themselves or appoint a spokesperson. She suggested that Council begin by hearing argument from the parties being treated as proponents.

Ms. Jenkinson clarified with regard to the decision to be made by the City Council; the Appellants bear the burden of proof to show that the Hearing Examiner Pro

Tem's conclusions were either erroneous or were not supported by the preponderance of the evidence. The Council may grant the appeal or grant the appeal with modifications if the Appellants have carried the burden of proof and the Council finds that the decision of the Hearing Examiner Pro Tem is not supported by a preponderance of the evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner Pro Tem. She further explained that a vote to grant the appeal or grant the appeal with modifications must be by a majority vote of the Council. Any other vote constitutes denial of the appeal. After all argument is presented and after the Council has asked any questions it may have, the Council will have the opportunity to deliberate and render oral decision on the issues before it.

Ms. Jenkinson stated that Council may have noted in the Memorandum from City Attorney James Haney, that the City has withdrawn its appeal of the Hearing Examiner Pro Tem's conclusion on sidewalk monitoring.

Ms. Jenkinson recommended to the City Council that they disclose any communications that they may have had with any of the parties to this appeal.

Councilmember Cole disclosed that he had served as Council Ombudsman during this time and had been openly approached by people who wanted to give him their opinion. He had informed them that he would limit their questions to process only and that the matter was quasi-judicial.

Councilmember Resha disclosed that Mr. Wilcox had contacted him but informed him that the matter was quasi-judicial.

Councilmember McCormick disclosed that she had eighteen emails from citizens and submitted into the record a list of the eighteen names.

Councilmember Allen disclosed that she had received a phone call on her answering machine from an individual regarding Tent City 4, and she had returned the call and informed the party that the matter was quasi-judicial.

Mayor Pro Tempore McCormick announced that the City Council would hear oral argument from the proponents and reminded them that they would only have ten minutes.

Mr. Haney gave his presentation of the City's appeal by arguing that the Planning Director did have jurisdiction and the authority to grant the temporary use permit. City Council asked questions of the proponents. Ted Hunter, Attorney for SHARE/WHEEL, reserved his minutes to use for rebuttal and affirmed his support for the position of the Planning Department staff and the City Attorney.

Mayor Pro Tempore McCormick announced that the City Council would hear oral argument from the opponents and reminded them that they would only have ten minutes.

Appellant Call and Wilcox divided their time and presented the positions of the opponents which focused on sections of the Hearing Examiner Pro Tem's Conclusions of Law and Findings of Fact. City Council asked questions of the opponents.

Mayor Pro Tempore McCormick explained that the threshold question before the Council is whether the Hearing Examiner Pro Tempore correctly decided the jurisdiction issue. She continued that Council had two options:

1. To overturn the interpretation or decision of the Hearing Examiner Pro Tempore and continue to consider the remainder of the issues on appeal, or;
2. To uphold the interpretation or decision of the Hearing Examiner Pro Tempore and remand the matter to the Planning and Community Development Staff and have them schedule an open record hearing before the Council.

Councilmember Cole stated that he would be voting against the motion as a procedural issue only as he supports Tent City 4. However, he agrees with the decision of the Hearing Examiner Pro Tempore that the

March 27, 2007

Temporary Use Permit should have been a legislative decision by City Council.

Motion by Ms. Allen, second by Mr. Robinson, to overturn the interpretation of the Hearing Examiner Pro Tempore and continue to consider the remainder of the issues on appeal.

Upon a poll of the Council, Allen, McCormick, Resha, Robinson, and Vache voted aye. Motion carried (5 - 1) with Cole voting nay.

RECESS

The Mayor Pro Tempore McCormick declared a recess at 9:00 p.m. The hearing reconvened at 9:12 p.m.

APPEAL HEARING FROM THE FINDINGS, CONCLUSIONS, AND DECISION OF THE HEARING EXAMINER PRO TEMPORE ON THE APPEAL OF A TYPE I PERMIT ISSUED FOR TENT CITY 4 (QUASI-JUDICIAL)

Mayor Pro Tempore McCormick stated that since the City Council has decided to overturn the Hearing Examiner Pro Tempore on the jurisdiction issue, the Council can continue to consider the remaining issues on appeal.

Mayor Pro Tempore McCormick called for a motion regarding the disposition of the appeal of Shelly and Jeffrey Schur. Did the Hearing Examiner Pro Tempore err in concluding that Appellants Shelly and Jeffrey Schur did not have standing to appeal the Type I Temporary Use Permit for Tent City 4?

Motion by Mr. Robinson, second by Mr. Resha, to uphold the appeal of Shelly and Jeffrey Schur.

Upon a poll of the Council, Allen, Cole, McCormick, Resha, Robinson, and Vache voted aye. Motion carried unanimously (6 - 0).

Mr. Haney asked for clarification of the motion on whether there will be no remand of the Schur's appeal back to City Council. Mayor Pro Tempore McCormick

assured him that he was correct and there would be no remand.

Mayor Pro Tempore McCormick called for a motion regarding the disposition of the appeal of Amanda Fleig. Having concluded that Planning lacked jurisdiction to make the decision on the Type I Temporary Use Permit and that the permit was 'void and without effect', did the Hearing Examiner Pro Tempore err in examining the remaining issues on appeal?

Motion by Mr. Robinson, second by Mr. Vache, to deny the appeal of Amanda Fleig.

Upon a poll of the Council, Allen, Cole, McCormick, Resha, Robinson, and Vache voted aye. Motion carried unanimously (6 - 0).

Mayor Pro Tempore McCormick called for a motion regarding the disposition of the appeal of Jon Wilcox. Did the Hearing Examiner Pro Tempore err in applying the criteria for approval of a Temporary Use?

Motion by Mr. Cole, second by Mr. Robinson, to uphold the Hearing Examiner Pro Tempore's decision and to deny the appeal of Jon Wilcox.

Upon a poll of the Council, Allen, Cole, McCormick, Resha, Robinson, and Vache voted aye. Motion carried unanimously (6 - 0).

Mayor Pro Tempore McCormick called for a motion regarding the disposition of the appeal of Naomi Call. Did the Hearing Examiner Pro Tempore err in discussing the Fourth Amendment of the U.S. Constitution with respect to Temporary Use Condition Eight requiring 'security background checks' for new Tent City 4 residents?

Motion by Ms. Allen, second by Mr. Resha, to uphold the Hearing Examiner Pro Tempore's decision and to deny the appeal of Naomi Call.

Upon a poll of the Council, Allen, Cole, McCormick, Resha, Robinson, and

March 27, 2007

Vache voted aye. Motion carried
unanimously (6 - 0).

ADJOURNMENT

There being no further business to come before the Council, Mayor Pro Tempore McCormick adjourned the special meeting at 9:50 p.m.

MAYOR PRO TEMPORE MCCORMICK

CLERK